

**Larry Albright, Joseph Albright and Phil Wallace
t/a Albright & Wallace and Newt's Roofing
and Residential Reroofing Union, Local 30B of
the United Union of Roofers, Waterproofers,
and Allied Workers, AFL-CIO. Case 4-CA-
20645**

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon a charge and amended charge filed on April 16 and June 24, 1992,¹ respectively, by the Residential Reroofing Union, Local 30B of the United Union of Roofers, Waterproofers, and Allied Workers, AFL-CIO, the General Counsel of the National Labor Relations Board issued a complaint on June 26, against Larry Albright, Joseph Albright and Phil Wallace t/a Albright & Wallace and Newt's Roofing (Respondent Albright & Wallace, Respondent Newt's Roofing, or jointly the Respondent), alleging that they have violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge, amended charge, and complaint, the Respondent has failed to file a timely answer.

As no timely answer was filed and no extension of time to answer was requested or granted before the due date, the General Counsel filed a Motion for Summary Judgment on October 26, with attached exhibits. On October 28, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the Complaint shall be considered to be admitted to be true and shall be so found by the Board." By letter dated September 23, the General Counsel advised the Respondent that unless an answer was received by October 14, a Motion for Summary Judgment would be filed with the Board. No answer was received by the Regional Office by that date, and the Respondent did not request an extension of time for filing an answer. Accordingly, the General Counsel filed with the Board a Motion for Summary Judgment, dated October 22, on October 26. Thereafter, but also October 26, the Respondent filed with the Region a response to the complaint dated October 23 admitting in part and denying in part the allegations of the complaint. On Oc-

tober 28, the Board issued a Notice to Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. The Respondent did not file a response or otherwise explain its failure to file a timely and proper answer.

Accordingly, in view of the Respondent's failure to file an answer that comports with the Board's Rules, and in the absence of good cause being shown for the failure to file a timely and proper answer, we grant the General Counsel's Motion for Summary Judgment. *H & D Trucking*, 297 NLRB 543 (1990).

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

Respondent Albright & Wallace, a partnership owned jointly by Larry Albright and Phil Wallace until about January 1992 and since about January 1992, owned jointly by Larry Albright, Joseph Albright, and Phil Wallace, partners, doing business as Albright & Wallace, has been engaged in the roofing and general construction business with a facility located at 3114 Almond Street, Philadelphia, Pennsylvania. Since about January 1992, Larry Albright, Joseph Albright and Phil Wallace t/a Albright & Wallace has continued to operate from the same location previously occupied by Larry Albright and Phil Wallace t/a Albright & Wallace, and has continued to perform the same operations, with the same equipment, business purposes, and management. Larry Albright, Joseph Albright and Phil Wallace t/a Albright & Wallace has been at all material times an alter ego of Larry Albright and Phil Wallace t/a Albright & Wallace.

From about September 1989 to about August 1990, Respondent Newt's Roofing was owned jointly by Larry Albright and Phil Wallace, partners, doing business as Newt's Roofing, and was engaged in the roofing business at the facility located at 3114 Almond Street, Philadelphia, Pennsylvania. About August 1990, Larry Albright and Phil Wallace ceased trading as Newt's Roofing and continued trading only as Albright & Wallace. From about September 1989 to about August 1990, Larry Albright and Phil Wallace t/a Albright & Wallace and Larry Albright and Phil Wallace t/a Newt's Roofing were affiliated businesses with substantially common ownership, common management, common supervision, and common business purposes; that performed the same operations using the same equipment; and that occupied the same premises. By virtue of these operations, Larry Albright and Phil Wallace t/a Albright & Wallace and Larry Albright and Phil Wallace t/a Newt's Roofing were a single employer within the meaning of the Act.

During the year ending June 26, 1992, the Respondent has provided services valued in excess of \$50,000 to the Philadelphia Housing Authority. During the year

¹ All subsequent dates are in 1992 unless otherwise indicated.

ending June 26, 1992, the Philadelphia Housing Authority purchased and received goods valued in excess of \$50,000 directly from points located outside the Commonwealth of Pennsylvania. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About December 1989, the Respondent, an employer engaged in the building and construction trade, granted recognition to the Union as the exclusive collective-bargaining representative of a unit of the Respondent's employees by entering into a collective-bargaining agreement with the Union for the period from December 1, 1989, to October 31, 1992, without regard to whether the majority status of the Union was established under the provisions of Section 9 of the Act. The unit as described in article 2, section 3, of the 1989-1992 agreement, is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. At all material times, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the employees in the unit.

Since about January 1992 and continuing to date, the Respondent has failed to continue in effect all the terms and conditions of the 1989-1992 agreement. Thus the Respondent has: hired employees not referred by the Union in violation of article VI; failed to pay employees the wage rates specified in article IX; failed to make payments to the Union's Welfare, Pension, Vacation, and Industry Funds as required by articles XX, XXI, XXII, and XXIII; and failed to file monthly reports with the funds as required by article XXIV.² The Respondent engaged in this conduct without the Union's consent. The terms and conditions of employment affected by this conduct are mandatory subjects for the purpose of collective bargaining. Accordingly, we find that this conduct violated Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing to continue in effect all the terms and conditions of the 1989-1992 agreement by hiring employees not referred by the Union, in violation of article VI; failing to pay employees the wage rates speci-

²It is well settled that industry advancement funds are nonmandatory subjects of bargaining. Accordingly, we find that the Respondent has not, as alleged in the complaint, violated the Act by failing to make industry promotion fund contributions. See *Finger Lakes Plumbing & Heating Co.*, 254 NLRB 1399 (1981).

fied in article IX; failing to make payments to the Union's Welfare, Pension, and Vacation Funds as required by articles XX, XXI, XXII, and XXIII; and failing to file monthly reports with the funds as required by article XXIV, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to make the unit employees whole for any losses attributable to its hiring employees not referred by the Union in violation of article VI and failing to pay employees the wage rates specified in article IX of the 1989-1992 collective-bargaining agreement as set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, having found that the Respondent has violated Section 8(a)(1) and (5) by failing to make contractually required payments to the Union's Welfare, Pension, and Vacation Funds as required by articles XX, XXI, XXII, and XXIII of the 1989-1992 agreement, we shall order the Respondent to make whole its unit employees by making all payments that have not been made and that would have been made but for the Respondent's unlawful failure to make them, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, supra.

We shall also order the Respondent to file monthly reports with the funds as required by article XXIV of the 1989-1992 agreement.

ORDER

The National Labor Relations Board orders that the Respondent, Larry Albright, Joseph Albright and Phil Wallace t/a Albright & Wallace and the Respondent, Newt's Roofing, jointly and severally, Philadelphia, Pennsylvania, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to continue in effect for the period of the agreement all the terms and conditions of employment of its 1989–1992 agreement by hiring employees not referred by the Union in violation of article VI; failing to pay employees the wage rates specified in article IX; failing to make payments to the Union's Welfare, Pension, and Vacation Funds as required by articles XX, XXI, XXII, and XXIII; and failing to file monthly reports with the funds as required by article XXIV.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make the unit employees whole with interest for hiring employees not referred by the Union in violation of article VI, failing to pay employees the wage rates specified in article IX, and failing to make payments to the Union's Welfare, Pension, and Vacation Funds as required by articles XX, XXI, XXII, and XXIII.

(b) Make all payments required under articles XX, XXI, XXII, and XXIII for the Union's Welfare, Pension, and Vacation Funds.

(c) File all reports required under article XIV for the Union's Welfare, Pension, and Vacation Funds.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(e) Post at its facility in Philadelphia, Pennsylvania, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. September 21, 1993

James M. Stephens, Chairman

Dennis M. Devaney, Member

John Neil Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail during the period of the agreement to honor the terms and conditions of employment of our 1989–1992 agreement with the Residential Reroofing Union, Local 30B of the United Union of Roofers, Waterproofers, and Allied Workers, AFL–CIO by hiring employees not referred by the Union in violation of article VI; failing to pay employees the wage rates specified in article IX; failing to make payments to the Union's Welfare, Pension, and Vacation Funds as required by articles XX, XXI, XXII, and XXIII; and failing to file monthly reports with the funds as required by article XXIV.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL honor our 1989–1992 agreement with the Union and will make our employees and the union funds whole with interest for any losses they may have incurred due to our failure to honor the contract.

WE WILL file all reports that are due to the union funds.

LARRY ALBRIGHT, JOSEPH ALBRIGHT
AND PHIL WALLACE T/A ALBRIGHT &
WALLACE AND NEWT'S ROOFING

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."